

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT SEATTLE

5 UNITED STATES OF AMERICA,

6 Plaintiff(s),

7 v.

8 ALFONSO ALLAN BROOKS,

9 Defendant(s).

NO. CR03-311MJP

ORDER ON DEFENDANT'S
MOTION TO COMPEL

10 The above-entitled Court, having received and reviewed:

- 11 1. Defendant's Motion for Court's Order Compelling the Government to Provide the Defendant
12 with True and Correct Copies of Documents Filed With the Court (Dkt. No. 573)
13 2. Government Response (Dkt. No. 579)
14 3. Defendant's Reply to Response (Dkt. No. 587)
15 4. Defendant's Second Motion for Court's Order Compelling the Government to Provide the
16 Defendant with True and Correct Copies of Documents Filed With the Court (Dkt. No. 585)
17 5. Defendant's Modified Motion for Court's Order Compelling the Government to Provide the
18 Defendant with True and Correct Copies of Documents Filed With the Court (Dkt. No. 588)

19 and all exhibits and declarations attached thereto, makes the following ruling:

20 IT IS ORDERED that the motion is DENIED.

21 Defendant has filed a motion requesting: (1) all discovery materials, and all Brady and all
22 Jencks materials with respect to his case; (2) all pre- and post-trial discovery requests served by the
23 Government on the defense; and (3) all correspondence between the Government and his defense
24 counsel. Dkt. No. 573 at pp. 1-2. Defendant claims a need for this material on the grounds that he is
25 preparing a Section 2255 Petition and has been unable to obtain this material from his trial counsel.

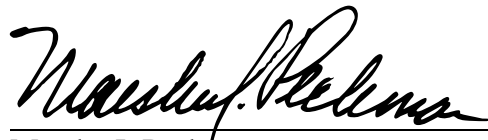
1 Defendant has no matters pending before this Court; the case number under which he has filed
2 this request is a closed matter, his jury trial conviction is final, and his appeal has been dismissed.

3 Defendant has not filed a Section 2255 Petition and cites no authority permitting the Court to
4 order “pre-Petition” discovery. The Rules Governing Section 2255 Proceedings provide for discovery
5 only once “a motion [is] filed in United States District Court under 28 U.S.C. § 2255.” 2255 Rule 1.
6 The Ninth Circuit has already ruled pre-petition discovery to be impermissible. See Calderon v.
7 United States District Court for the Northern District of California, 98 F.3d 1002, 1006 (9th Cir.
8 1996).

9 The amount of material Defendant is requesting is massive (*see* Gov’t Response, p. 5), and it is
10 material which he already been provided. Absence statutory or case authority permitting such an
11 extraordinary request, the Court is disinclined to grant it in advance of Defendant’s filing of a habeas
12 petition.

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14 The clerk is directed to provide copies of this order to all counsel of record.

15 Dated: October 27, 2008

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18 Marsha J. Pechman
19 U.S. District Judge
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